

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

CHARLESTON

JOHN A WHITT,

Petitioner,

v.

Case No. 2:10-cv-00009

[ADMINISTRATOR,
South Central Regional Jail,]

Respondent.

PROPOSED FINDING AND RECOMMENDATION

On January 4, 2010, Petitioner filed a document which has been interpreted as a petition for a writ of habeas corpus (docket # 1). This matter is assigned to the Honorable John T. Copenhaver, Jr., United States District Judge, and it is referred to the undersigned United States Magistrate Judge for submission of proposed findings and a recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B).

PROCEDURAL HISTORY AND PETITIONER'S RELEVANT CLAIMS

Petitioner alleges that he was arrested and jailed on November 1, 2009, on a Kanawha County charge and an Upshur County charge. He alleges that, as of January 4, 2010, he had not had a preliminary hearing and that he had neither seen nor talked to an attorney. Petitioner claims to have written letters about this situation, without receiving replies. He asks the court to order his immediate release.

Court staff has contacted the Magistrate Court of Kanawha County with respect to these allegations and has learned that on November 10, 2009, the Kanawha County charge was dismissed, due to the expiration of the ten days within which a preliminary hearing must be held. This fact has been confirmed in writing. Petitioner is now being held at the Tygart Valley Regional Jail on the Upshur County charge on a \$50,000 bond. There was a delay, from November 10, 2009 until January 6, 2010, in transmitting the dismissal of the Kanawha County charge to the South Central Regional Jail so that Petitioner could be returned to Upshur County to face that charge. Petitioner is no longer held in the Southern District of West Virginia. The undersigned proposes that the presiding District Judge **FIND** that Petitioner's allegations that he is in custody in the Southern District of West Virginia without an appropriate hearing is moot.

It is respectfully **RECOMMENDED** that this action be dismissed as moot.

Petitioner is notified that this Proposed Findings and Recommendation is hereby **FILED**, and a copy will be submitted to the Honorable John T. Copenhaver, Jr., United States District Judge. Pursuant to the provisions of Title 28, United States Code, Section 636(b)(1)(B), and Rules 6(d) and 72(b) of the Federal Rules of Civil Procedure, the parties shall have fourteen days (filing of objections), and then three days (service/mailing), from the date

of filing this Proposed Findings and Recommendation within which to file with the Clerk of this Court, specific written objections, identifying the portions of the Proposed Findings Recommendation to which objection is made, and the basis of such objection. Extension of this time period may be granted for good cause shown.

Failure to file written objections as set forth above shall constitute a waiver of de novo review by the District Court and a waiver of appellate review by the Circuit Court of Appeals. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984). Copies of such objections shall be served on Judge Copenhaver.

The Clerk is directed to file this Proposed Findings and Recommendation and to mail a copy of the same to Petitioner at the Tygart Valley Regional Jail.

February 1, 2010
Date

Mary E. Stanley
Mary E. Stanley
United States Magistrate Judge